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09/692,455	10/20/2000	Satoru Fujita	043034/0159	6205

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FOLEY AND LARDNER LLP  
SUITE 500  
3000 K STREET NW  
WASHINGTON, DC 20007

EXAMINER

NGUYEN, NGA B

ART UNIT PAPER NUMBER

3628

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/692,455

**Applicant(s)**

FUJITA, SATORU

**Examiner**

Nga B. Nguyen

**Art Unit**

3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-17 and 19-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-17 and 19-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This Office Action is the answer to the Amendment filed on November 4, 2005, which paper has been placed of record in the file.
2. Claims 1-5, 7-17, and 19-32 are pending in this application.

### ***Response to Arguments/Amendment***

3. Applicant's arguments with respect to claims 1-5, 7-17, and 19-32 regarding to prior arts rejection have been considered but are not persuasive.

In response to the applicant's argument that Eder and Ojha do not disclose wherein the strategy computation section further establishes a purchasing strategy taking into consideration a possible rise of a purchasing price of each of the purchase items due to participation of a third party to the purchasing in the future, examiner submits that examiner submits that applicant has not submitted any rebuttal of the well known statements, but has merely requested references disclosing the well known limitations. Furthermore, the applicant must be given the opportunity to challenge the correctness of such assertions and allegations. Again, the applicant has not challenged the correctness of the assertions, only the use of Official Notice. Bald statements such as "the examiner has not provided proof that this element is well known" or "applicant disagrees with the examiner's taking of Official Notice and hereby requests evident in support hereof", are not adequate and do not shift the burden to the examiner to provide evidence in support of the Official Notice. Allowing such statements to challenge Official Notice would effectively destroy any incentive on the part of the examiner to use it in the

process of establishing a rejection of notoriously well known faces (*In re Boon*, 169 USPQ 231 (CCPA 1971)). Therefore, the examiner decides to maintain the well known statements indicated in the previous office action.

In conclusion, for the reason set forth above, examiner decides to maintain the previous office action and make this Office action FINAL.

4. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

#### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-5, 7-17, and 19-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eder, U.S. Patent No. 5,615,109, in view of Ojha et al (hereinafter Ojha), U.S. Patent No. 6,598,026.

Regarding to claim 1, Eder discloses a system for deciding a purchase item for which a purchase is made, comprising:

a data memory for storing a logical formula representing a relationship among a plurality of purchase items, a value table containing a value of each of the purchase items, price information of each of the purchase items in at least one market, a total purchasing fund, and a purchasing strategy (column 31, lines 23-55, the server, personal computer 20 having a hard drive 84 for storing database table; column 39, lines 25-30 and column 40, lines 50-67; Item Master table).

a profit computation section for computing a profit obtainable when at least one purchase item selected from the plurality of purchase items is purchased, based on the value and the price information of the at least one purchase item (column 64, lines 15-67) ;  
and

a strategy computation section for determining at least one purchase item for which a purchase should be made and a gross profit obtainable from the determined at least one purchase item, wherein the strategy computation section selects a candidate combination including **one of**: 1) no purchase items, 2) one purchase item, and 3) two or more purchase items from the plurality of purchase items based on the formula, and price information of two or more of the plurality of purchased items, and instructs the

profit computation section to computer a profit obtainable from the selected candidate combination (columns 65-72).

Eder discloses the system for deciding a purchase item instead of for a bidding item. However, bidding is a special type of purchase in which a plurality of purchasers competes for purchasing an item, the purchaser who places a highest price will get the item, such bidding for the item is well known in the art. Therefore, it would have been obvious at the time of the invention to modify Eder's to replace a purchase item by a bidding item for the purpose of maximizing the possible profit when bidding for items.

Eder does not disclose two or more of the plurality of bid items being separate and distinct from one another and not different quantities of the same item. However, Ojha discloses two or more of the plurality of bid items being separate and distinct from one another and not different quantities of the same item (column 13, lines 25-45). Therefore, it would have been obvious at the time of the invention to modify Eder's to adopt the teaching of Ohja above for the purpose of maximizing the possible profit when bidding for items.

Eder does not disclose wherein the strategy computation section further establishes a purchasing strategy taking into consideration a possible rise of a purchasing price of each of the purchase items due to participation of a third party to the purchasing in the future. However, such feature is well known in the art in bidding for an item. For example, in traditional auction, the bidders competes each other in bidding for an item by submitting higher price in order to get the item, thus the purchase price of the item is increasing. Therefore, it would have been obvious at the time of the invention to

modify Eder's to include the feature above for the purpose of considering the rise of the item's price in the purchasing strategy.

Regarding to claims 2-5, Eder discloses wherein the logical formula represents any combination of a logical OR, a logical exclusive-OR, and a logical AND of the plurality of purchase items, wherein the logical OR represents a desire to maximize the possible profit within the total purchasing fund to obtain a subset of bid items form the plurality purchase items; the logical exclusive-OR represents a desire to determine a single purchase item of the plurality of purchase item so as to maximize the possible profit within the total purchasing fund, and the logical AND represents that a combinatorial value will be obtained only when a plurality of purchase items related to the logical AND are all purchased (column 84, TABLE 83).

Regarding to claim 7, Eder discloses an automated purchasing system comprising:

- a price collection device for automatically collecting price information of a purchase item for which a purchase is made in at least on market at regular intervals (column 45, lines 35-50; obtaining the historical data for the item from the sales history table to determine the average period price for the item);

- a purchase decision system as described in claim 1 above.

Eder discloses the system for deciding a purchase item instead of for a bidding item. See the same motivation in claim 1 above.

Eder does not disclose a bidding device performing a bid for the determined at least one bid item. However, Eder discloses a client personal computer 10 connected to

the network (column 30, lines 25-30). Moreover, the user using a personal computer connected to the network such as the Internet for bidding an item is well known in the art. Therefore, it would have been obvious at the time of the invention to modify Eder's to allow the client uses the personal computer 10 as a bidding device performing a bid for the purpose of obtaining a competition between a plurality of purchasers for purchase an item in order to get highest possible price for an item.

Eder does not disclose two or more of the plurality of bid items being separate and distinct from one another and not different quantities of the same item. However, Ohja discloses two or more of the plurality of bid items being separate and distinct from one another and not different quantities of the same item (column 13, lines 25-45). Therefore, it would have been obvious at the time of the invention to modify Eder's to adopt the teaching of Ohja above for the purpose of maximizing the possible profit when bidding for items.

Eder does not disclose wherein the strategy computation section further establishes a purchasing strategy taking into consideration a possible rise of a purchasing price of each of the purchase items due to participation of a third party to the purchasing in the future. However, such feature is well known in the art in bidding for an item. For example, in traditional auction, the bidders competes each other in bidding for an item by submitting higher price in order to get the item, thus the purchase price of the item is increasing. Therefore, it would have been obvious at the time of the invention to modify Eder's to include the feature above for the purpose of considering the rise of the item's price in the purchasing strategy.



Regarding to claim 8, Eder discloses a purchase supporting system comprising:

a market observation price device for automatically collecting price information of a purchase item for which a purchase is made in at least on market at regular intervals (columns 45-48; the software completes forecasts of item demand for the base period using the specified historical information together with the 32 different algorithm);

a purchase decision system as described in claim 1 above.

a purchase recommendation device for representing determined at least one purchase item as recommendable information reflecting price variations in the market (columns 83-84).

Eder discloses the system for deciding a purchase item instead of for a bidding item. See the same motivation in claim 1 above.

Eder does not disclose two or more of the plurality of bid items being separate and distinct from one another and not different quantities of the same item. See the same motivation in claim 1 above.

Eder does not disclose wherein the strategy computation section further establishes a purchasing strategy taking into consideration a possible rise of a purchasing price of each of the purchase items due to participation of a third party to the purchasing in the future. See the same motivation in claim 1 above.

Regarding to claims 9-10, Eder discloses wherein the logical formula, the value table, and the total purchasing fund are allowed to be updated with a lapse of time (column 38, lines 35-60).

Regarding to claims 11-12, Eder discloses a mobile agent, wherein, after the logical formula, the value table, the total pursuing fund and the purchasing strategy have been input, the automated purchasing system is transferred from a user's computer to a continuously opening computer to allow periodical market observation (column 30, lines 25-37, the server personal computer 20).

Claims 13-17, 19-24 contain similar limitations found in claims 1-5, 7-12 above, therefore are rejected by the same rationale.

Claims 25-27 are written in computer software that parallel the limitations found in claims 13, 19, 20 above, therefore are rejected by the same rationale.

Regarding to claim 28, Eder discloses in computer, a method for deciding a purchasing item for which a bid is made, comprising the steps of:

storing in a memory device a logical formula representing a logical OR of two purchase item X and Y, a value tale containing values  $x_m$  and  $y_m$  of respective ones of the purchase items X and Y, present prices  $x$  and  $y$  of respective ones of the purchase items X and Y, a total purchasing fund  $T$ , and a constant  $p_1$  determined by a purchasing strategy (column 31, lines 23-55, the server, personal computer 20 having a hard drive 84 for storing database table; column 39, lines 25-30 and column 40, lines 50-67; Item Master table);

determining by the computer whether  $y < y_m$ , Condition1 is satisfied;  $y < (T + y_m - x_m)/2$ , Condition2 is satisfied;  $y - y_m < x - x_m$ , Condition3 is satisfied;  $x + y > T$ , condition5 satisfied;  $y > p_1 * x_m + y_m$ , Condition6 satisfied; determining by the computer that the purchase item Y should not be purchase in one of case where the Condition1 is

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no satisfied, the Condition1 is satisfied, ect...; determining by the computer that the purchase item Y should by purchased in one of cases where the Conditions1 and 2 are satisfied, where the Condition 1 is satisfied, etc... (see columns 65-72).

Eder discloses the system for deciding a purchase item instead of for a bidding item, and Eder does not disclose determining whether close of bidding for Y is earlier than that X. However, bidding is a special type of purchase in which a plurality of purchasers competes for purchasing an item, the purchaser who places a highest price will get the item, such bidding for the item is well known in the art. Moreover, it is well known in the art to determining the closing time of one bidding item. Therefore, it would have been obvious at the time of the invention to modify Eder's to replace a purchase item by a bidding item for the purpose of maximizing the possible profit when bidding for items.

Eder does not disclose two or more of the plurality of bid items being separate and distinct from one another and not different quantities of the same item. However, Ohja discloses two or more of the plurality of bid items being separate and distinct from one another and not different quantities of the same item (column 13, lines 25-45). Therefore, it would have been obvious at the time of the invention to modify Eder's to adopt the teaching of Ohja above for the purpose of maximizing the possible profit when bidding for items.

Eder does not disclose wherein the strategy computation section further establishes a purchasing strategy taking into consideration a possible rise of a purchasing price of each of the purchase items due to participation of a third party to the

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purchasing in the future. However, such feature is well known in the art in bidding for an item. For example, in traditional auction, the bidders competes each other in bidding for an item by submitting higher price in order to get the item, thus the purchase price of the item is increasing. Therefore, it would have been obvious at the time of the invention to modify Eder's to include the feature above for the purpose of considering the rise of the item's price in the purchasing strategy.

Claim 29 has similar limitations found in claim 28 above, therefore, is rejected by the same rationale.

Regarding to claim 30, Eder discloses wherein the strategy computation section determines the at least one bid item in the candidate combination so as to maximize the possible profit within the total purchasing fund (column 67, lines 12-43).

Regarding to claims 31-32, Ojha further discloses wherein a first bid item of said two or more of the plurality of bid items is being offered for sale by a first entity; and wherein a second bid item of said two or more of the plurality of bid items is being offered for sale independently of the first bid item by a second entity that is different from the first entity (column 13, lines 25-45). Therefore, it would have been obvious at the time of the invention to modify Eder's to adopt the teaching of Ohja above for the purpose of maximizing the possible profit when bidding for items.

### ***Conclusion***

7. Claims 1-5, 7-17, and 19-32 are rejected.

8. The prior arts made of record and not relied upon is considered pertinent to applicant's disclosure:

McAfee et al. (US 6,718,312) disclose a method and system for combinatorial auctions with bid composition restrictions.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Nga B. Nguyen whose telephone number is (571) 272-6796. The examiner can normally be reached on Monday-Thursday from 9:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung S. Sough can be reached on (571) 272-6799.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-3600.

10. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks  
C/o Technology Center 3600  
Washington, DC 20231

Or faxed to:

(571) 273-8300 (for formal communication intended for entry),

or

(571) 273-0325 (for informal or draft communication, please label "PROPOSED" or "DRAFT").

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Hand-delivered responses should be brought to Knox building, 501 Dulany Street, Alexandria, VA, First Floor (Receptionist).

Nga B. Nguyen

A handwritten signature in black ink, appearing to read 'Nga B. Nguyen', written in a cursive style.

January 18, 2006